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EXTRAORDINARY

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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 20th October, 1952

No. 19/11/52-Elec.III.—WHEREAS the election of Shri Ishwarbhai Khodabhai Chawda of Congress Chhawani, Borsad, District Kaira, as a member of the Legislative Assembly of Bombay from the Borsad No. 2 constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Motisinghji Maharamansinghji Mahida of Gajna, Borsad Taluka, Kaira District, Bombay;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION PETITION No. 11 OF 1952

Coram

Exh. No. 10.

Shri B. C. Vakil, B.A. (Hons.), LL.B.

... ..

Chairman.

Shri T. P. Ghogale, B.A. (Hons.), LL.B. }

Shri A. A. Adarkar, B.A., LL.B. }

Members of the Election Tribunal.

In the matter of the Representation of the People Act, 1951,

and

In the matter of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951,

and

In the matter of the Election Petition presented thereunder by Shri Motisinghji Maharamansinghji Mahida, residing at Gajna via Bhadrans, Taluka-Borsad, District Kaira. } Shri B. K. Amin, with Shri R. K. Gandhi.

Versus

(1) Chawda Ishwarbhai Khodabhai, residing at Congress Chhawani Borsad, District Kaira.—*Shri P. B. Patwari.*

(2) Patel Manibhai Hathibhai, residing at Bhadran, taluka Borsad, District Kaira.—*In person.*

(3) Baraiya Fulabhai Kalidas, residing at Bamangam, taluka Borsad, District Kaira.—*Absent.*

This election petition is filed by one Motisinghji Maharamsinghji Mahida complaining against the decision given by the Returning Officer at Patlad. The petitioner and the three respondents had filed their nomination papers as candidates for the election to the Legislative Assembly of the State of Bombay for filling the seat in the Constituency Borsad No. 2 of the Kaira District. The petitioner filed four nomination papers, two on 23rd November 1951 and two more on 24th November 1951 and on the day of the scrutiny of the nomination papers, the Returning Officer rejected all those four nomination papers on the ground that the said nomination papers violated the provisions of Section 40 read with Section 33(3) and Section 36 of the Representation of the People Act, 1915. In the opinion of the Returning Officer a candidate for election could appoint only one man—either himself or someone else—as his election agent and as the petitioner appointed more than one person as his election agent in the four nomination papers, all the four nomination papers were rejected by the Returning Officer. According to the petitioner this rejection was improper and that it has materially affected the result of the election which followed and in which respondent No. 1 was declared duly elected. It is against that order of the Returning Officer rejecting his nomination papers that the petitioner has filed this petition praying that the election of the Constituency Borsad No. 2 for a seat in the Legislative Assembly of the Bombay State be declared wholly void and that the respondent be ordered to pay his costs.

2. Respondent No. 1 resisted this petition by his written statement at Ex. 7 while respondent No. 3 remained absent and respondent No. 2 though present in person took no part. Respondent No. 1 contended that the rejection of the nomination papers of the petitioner was proper as the petitioner was in duty bound to appoint only one election agent in all his nomination papers. He also contended that the appointment of the election agent was a distinct act to be done by the nominated candidate and that power, namely, the power of appointing the election agent, could not be exercised more than once. Further, he contended that the defect in the nomination papers was not a technical one but of a substantial character.

3. The points for determination that arise in this petition are :—

- (1) Whether the rejection of the nomination papers of the petitioner was improper?
- (2) If so, whether it has materially affected the result of the election?

The findings of the Tribunal on both these points are in the affirmative.

REASONS

4. The proved facts are these that the petitioner had submitted four nomination papers which are collectively marked Ex. A. In the first two nomination papers which were presented on 23rd November 1951, the petitioner had made a declaration that he had appointed one Amarsang Himatsang of Kathol as his agent. They were nomination papers bearing serial Nos. 11 and 12. On the next day, that is, on 24th November, the petitioner filed two more nomination papers. In the nomination paper which is at serial No. 24 he made a declaration that he had appointed one Pandya Natverlal Manishanker of Gajna as his election agent while in the second nomination paper which is at serial No. 25 he had declared that he had appointed himself as his election agent. Now, the ground on which the Returning Officer rejected all these nomination papers was that whereas, according to him, the nominated candidate could have appointed only one person, either himself or someone else, as his election agent, in all the four nomination papers the petitioner has appointed three election agents, that is, more than one person. Now, reference has been made by the Returning Officer to Section 40 read with Section 33(3) and Section 36. Taking Section 40 first for consideration, it is clear that every candidate at an election has to appoint in writing himself or some one person to be his election agent and that must be before the delivery of his nomination paper. In other words, it is clear that the appointment of the election agent must precede the presentation of the nomination paper. Mr Patwari for respondent No. 1 contended that as the petitioner had made the appointment of Amarsang Himatsang as his

ction agent in the two nomination papers that he had filed on 23rd November it act itself was invalid in law. According to him the appointment of an election agent can be made only once and when such appointment is made that power of the nominated candidate is over and that he has no power to appoint anybody else as his election agent. The argument of Mr. Patwari is, and that is embodied in para. 6 of his written statement, that the act of the appointment of an election agent was a distinct act which was to be done by the nominated candidate and that power could not be exercised more than once. Assuming this argument to be sound, if we were to examine the nomination papers submitted by the petitioner it would follow that he had made the appointment of his election agent in the first nomination paper, that is, the nomination paper at serial No. 11 and if that nomination paper is valid otherwise, according to the arguments of Mr. Patwari, the petitioner had no power left in him to make appointment of any other man as his election agent. Now, his nomination paper at serial No. 11 is valid if it is taken and examined as a separate entity. On that point there is no dispute. Therefore, if the petitioner had exhausted his power of appointing an agent after he had appointed one and made a declaration to that effect along with his nomination paper at serial No. 11, the remaining nomination papers *ipso facto* become invalid.

5. But then Mr. Patwari contended that after the Returning Officer had scrutinised the first nomination paper when he started scrutinizing the second nomination paper he must have found that two election agents have been appointed, with a result that the scrutiny of the second or for the matter of fact the third or the fourth nomination paper could relate back to the scrutiny of the first nomination paper, which, as stated before, was entirely valid if it was examined as a separate entity. Now, so far as the first two nomination papers concerned, there does not appear to be anything irregular, for in both the nomination papers at serial Nos. 11 and 12 the petitioner has made a declaration that he had appointed Amarsang Himatsang as his election agent. But then the difficulty starts when the third and the fourth nomination papers which were presented by the petitioner on 24th November are scrutinized. It is then realized that in the third nomination paper the petitioner has made a declaration that he had appointed one Pandya Natvarlal Manishanker as his election agent and this act, according to Mr. Patwari's argument, vitiates the appointment of the election agent in the first two nomination papers. The short point for consideration would be, whether when the Returning Officer scrutinizes the nomination papers he has a right to scrutinize all the nomination papers of a candidate together, as appears to have been done in this case, or whether he has to scrutinize the nomination papers one after another. Now, there does not appear to be any authority for the proposition that all the nomination papers of a nominated candidate should be scrutinized together or collectively. In this connection reference was made to Manipuri and Etah District Muhammadan Rural Constituency, 1946, U.P. Legislative Assembly, reported at page 530 of Indian Election Cases by Sen and Poddar, where it was held that "Simultaneous presentation of multiple nomination papers each containing declaration of appointment of different election agent by a candidate, invalidates all the nomination papers". That case can be distinguished from the present case as also from the Benares and Mirzapur Districts Muhammadan Rural Constituency, 1937, U.P. Legislative Assembly, which has been criticised in that case, on the following ground. In the first place, there the contention was, that all the multiple nomination papers were simultaneously presented and the decision there, was largely influenced by the fact that there was "simultaneous presentation". In the case before us there is no such allegation nor any evidence on the point that the four nomination papers were presented simultaneously. On the contrary, the four nomination papers bear different serial numbers and two of them were presented on one day and the remaining two on the following day. At the most in this case it could be contended that the presentation of only two was simultaneous. Without subscribing to the view held in Manipuri and Etah District Muhammadan Rural Constituency, 1946, it would be apparent that in the first two nomination papers which are at serial Nos. 11 and 12 the petitioner had appointed only the same person as his election agent. In that view of the facts the view held in Manipuri and Etah District Muhammadan Rural Constituency, 1946 cannot render the present nomination papers invalid.

6. In the opinion of the Tribunal the correct view on the point is expressed in Benares and Mirzapur Districts Muhammadan Rural Constituency, 1937, U.P. Legislative Assembly (page 154 Indian Election Cases, Sen and Poddar) where it is held that "Appointment of two different Election Agents by a candidate on two separate nomination papers does not invalidate his nomination." In that case sub-rule (6) (a) of Rule 4, U.P. Legislative Assembly Electoral (Elections and Election Petitions) Rules, 1936, was interpreted. That sub-rule is quoted at pages 155-156 and the relevant provision of that rule is that the candidate had to make two declarations in writing, one of which was "that the candidate has appointed or does thereby

appoint as his election agent....." The form of appointment of election agent in the present case Form 5-A (Rule 11-A) and runs thus: "I.....a candidate at t election.....hereby appoint.....as my election agent from this date....." No as already observed above, the appointment of the election agent must precede t presentation of the nomination paper; and that was exactly what the Benares a Mirzapur Districts Muhammadan Rural Constituency, 1937, (U.P. Legislative Assembly), to which reference has been made already, contemplated. Here also the words that "I appoint....." suggests that the appointment was made before the nomination paper was presented, for the declaration regarding the appointment of the election agent is part of the nomination paper, *vide* form at Schedule II. Under the circumstances the distinction which Mr. Patwari sought to draw between the U.P. Legislative Assembly Electoral (Elections and Election Petitions) Rules, 1936, and Section 40 of the Representation of the People Act, 1951, does not exist and the Benares and Mirzapur Districts Muhammadan Rural Constituency, 1937, case covers the point in dispute before us completely.

7. Now, Section 40 prescribes no penalty if the provisions contained therein are not complied with. In this connection reference may be made to Section 36(2)(d) where provision has been made that in the event of failure to comply with any of the provisions of Section 33 or 34 the Returning Officer may refuse the nomination. Mr. Patwari contended that these nomination papers violated clause (3) of section 33 in that the petitioner had made declarations appointing different persons as his election agents in contravention of the provisions of Section 40 and therefore he rendered his nomination liable to be refused. In other words, Mr. Patwar' wants the Tribunal to read Section 40 into Section 33, which on the plain reading of that Section, it is not possible to do. In the opinion of the Tribunal, therefore, this is not a case where breach of the provisions of Section 33 or Section 34 has been made. If the intention of the Legislature were to render the nomination invalid on account of the non-compliance of the provisions of Section 40, the same could have been made clear by incorporating Section 40 along with Sections 33 and 34 in clause (d) of Section 36 (2).

8. The next question for consideration is what would be the result if a nominated candidate has presented nomination papers with declarations that he has appointed more than one person as his election agents. In Razzar Mahammadan Rural Constituency, 1937, page 718, Sen and Poddar it is held that "Appointment of two different election agents in two sets of nomination papers is not illegal, nor does the invalidity of one affect the other." As pointed out above, the question of invalidity of the first nomination paper could arise only if the Returning Officer after examining that nomination paper and after finding it proper proceeds to examine the second nomination paper presented by the candidate. Every nomination paper is a separate unit and is to be scrutinized separately. There is provision that more than one nomination paper could be presented, with the result that if a candidate has presented more than one nomination paper and the nomination paper which the Returning Officer happens to scrutinize first proves to be invalid, it is open to him to consider the second nomination paper of the same candidate. But the converse of this is not covered by any specific provision of law. In other words, it has not been stated that if the first nomination paper of a candidate is found to be valid by the Returning Officer he should not go to the remaining nomination papers filed by him. The question is, therefore, to be decided on general principles of law, as was done in Benares and Mirzapur Districts Muhammadan Constituency, 1937. In that case where the facts were similar it was observed as follows:—

"It is admitted that of the two nomination papers, serial No. 3 was the first in point of time and it is clear that it was taken up first for consideration by the returning officer and was accepted. Standing by itself, serial No. 3 was admittedly a valid paper in all respects and the returning officer was bound to accept it. We do not find any force in the argument that if the returning officer had referred to serial No. 4, and had taken into consideration the declaration contained therein he should necessarily have arrived at the result that the corresponding declaration in serial No. 3 was invalid. There is no specific provision in election law to invalidate each of the two nominations so filed. We have, therefore, to fall back upon general principles of law which determine the validity of more than one act performed by a person in the exercise of a limited power with which he is invested by a particular provision of

law. An election agent is a person occupying a particular status and burdened with peculiar liabilities. He is a creation of the law and the power to appoint him is contained in Paragraph 1, Part II of the Corrupt Practices Order, which imposes a duty and confers a power at the same time but it clearly limits the power to the appointment of only one election agent. This power is exhausted as soon as some one person is appointed. Upon general principles any subsequent appointment made by him must be deemed to be in excess of the power given by the law and consequently invalid. The question, therefore, arises whether any such subsequent or void appointment can have the effect of invalidating the original appointment validly made. We are clearly of opinion that the answer must be in the negative. The first appointment having been validly made the power was exhausted and it remained good and valid and unaffected by the subsequent and void appointment of Murtuza in serial No. 4. This view is indirectly supported by Rule 4, sub-rule 7(b) (ii), quoted above. Again, the case we are considering might well be deemed to be covered by Rule 4, sub-rule (7) (c), quoted above. Serial No. 3 was considered first and accepted and serial No. 4 was next taken up by the returning officer who then could not ignore his knowledge that the candidate had already appointed himself as his election agent in serial No. 3 and in the view could reject serial No. 4 as irregular and void. Thus upon a comprehensive view of all the relevant provisions of law, we have arrived at the conclusion that the appointment of two or more election agents by a candidate by means of separate declarations on separate nomination papers filed at different times does not render him liable to the penalty of his nomination being rejected as invalid."

9. In the result the Tribunal holds that the rejection of the nomination of the petitioner was improper.

10. The next question is whether the result of the election has been materially affected by the improper rejection of the nomination of the petitioner under section 100(1) (c) of the Representation of the People Act, 1951. On that point it was agreed at the bar that there is a general presumption that in the case of an improper rejection of a nomination paper the result of the election must be deemed to have been materially affected, for nobody could foresee what would have been the result if the improperly rejected candidate was permitted to contest the election. Mr. Patwari for respondent No. 1 had conceded this position in law.

11. Regarding the costs of and incidental to the petition, the usual rule that the successful party should get his costs should be followed in this case and the Tribunal thinks that the ends of justice would be met if Rs. 100/- are allowed to the petitioner as costs of and incidental to this petition from respondent No. 1 who has resisted this petition. All the respondents should bear their own costs.

ORDER

The petition is allowed. The election of the Borsad Constituency No. 2 held in January 1952, is declared wholly void. Respondent No. 1 do pay Rs. 100 to the petitioner as costs of and incidental to this petition. All the respondents do bear their own costs.

12th October 1952.

(Sd.) B. C. VAKIL,
Chairman, Election Tribunal.

(Sd.) T. P. GHOGALE,
Member, Election Tribunal.

(Sd.) A. A. ADARKAR,
Member, Election Tribunal.

P. S. SUBRAMANIAN,
Officer on Special Duty

